

ON PAGE **A-31**NEW YORK TIMES
24 March 1987**J ABROAD AT HOME** | Anthony Lewis

Conspiracy to Defraud

WASHINGTON
What criminal charges might result from the special prosecutor's investigation of the Iran-contra affair? Among many possibilities one stands out. That would be a broad charge of conspiracy in the supply of arms to the Nicaraguan contras at a time when Congress had barred official military support.

The independent counsel, Lawrence E. Walsh, is at too early a stage of his investigation for anyone to know whether he will find enough evidence of such a conspiracy to put it to a grand jury and seek indictments. But there have been many published reports of hidden activities that seem to fit the relevant criminal statute.

Lieut. Col. Oliver North ran a network, complete with Swiss bank accounts, that funneled arms and money to the contras. The crews of supposedly private planes that dropped weapons to them made telephone calls to White House numbers, including Colonel North's. A contra leader, Alfonso Robelo, says he got \$10,000 a month through Colonel North for a year. And so on.

Then there was the money siphoned from the arms sales to Iran. Some appears to have gone as ransom to Lebanese kidnappers and kickbacks to Iranian officials. But whatever went to the contras would fit into such a conspiracy charge.

The relevant statute is the conspiracy section in the United States Code: Section 371 of Title 18. It punishes conspiracies to commit other specific offenses listed in the code. But it goes beyond listed offenses to punish, more generally, conspiracy "to defraud the United States."

A conspiracy to defraud, under that statute, does not require proof that the

Possible charges in the Iran affair.

Government suffered any financial loss. It need merely involve the misuse of government resources — personnel, for example — for ends that are corrupt or that interfere with proper governmental functions. As long ago as 1910 the Supreme Court said:

"The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government."

The Watergate cover-up prosecution relied in part on that conspiracy statute. H.R. Haldeman, John Ehrlichman and John N. Mitchell were convicted of conspiracy to defraud the United States "of the Government's right" to have officials of the Justice Department and the C.I.A. "transact their official business honestly and impartially, free from corruption. . . ."

In the case of the contras, it might be argued that officials conspired to defraud the United States if they used their position and resources and time to defeat what was then the law: the Boland Amendment forbidding official arms supplies. There would no doubt be evidence of concealment, as in Watergate; that indictment spoke of "deceit, craft, trickery. . . ."

The Boland Amendment was not a criminal law. For that reason some have jumped to the conclusion that there is no penalty for violating the

policy it laid down. But a conspiracy designed to defeat the policy could well be punished under the conspiracy statute. The maximum penalty is five years in prison and a \$10,000 fine.

Of course everything will depend on the evidence dug out by Mr. Walsh and the 17 lawyers and many investigators he has working on the facts. But there is reason to believe that he is focusing, first, on the question of aid to the contras.

One clue is that the House and Senate committees on the Iran-contra affair, when they reached their extraordinary agreement to work together, announced that they would investigate the contra supply operation before turning to the Iran arms sales. The committees made that decision after discussion with Mr. Walsh.

There are other relevant statutes: on perjury and obstruction of justice, for example. Also, Section 2778 of Title 22 makes it a crime, punishable by up to two years in prison and a \$100,000 fine, to export arms in violation of the rules. The statute exempts officials only if they are carrying out a "sales program authorized by law."

Looming behind all possible criminal prosecutions is the question of President Reagan's role. Suppose Colonel North and Rear Adm. John Poindexter are given partial immunity and compelled to testify. Suppose they say that they were following the President's orders. At his press conference last week Mr. Reagan said with emphasis: "I set the policy in this Administration."

At this stage all is speculation, but I think one thing is clear. We have been paying too much attention to such passing phenomena as press conferences. The greater engine for discovering the truth is the criminal law. □